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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MAY 7, 2001

PETITION OF

COX VIRGINIA TELCOM, INC.

CASE NO. PUC990110

For approval of relocation
of network interface device
to minimum point of entry

ORDER DIRECTING JOINT
STATEMENT OF ISSUES TO BE FILED

On June 9, 1999, Cox Virginia Telcom, Inc. ("Cox") filed with the State Corporation Commission ("Commission") its Petition on behalf of complainants Breeden Company and PGR Real Estate (collectively "Complainants") in the above-captioned case.¹ Pursuant to a Preliminary Order issued July 30, 1999, Bell Atlantic-Virginia, Inc. n/k/a Verizon Virginia Inc. ("Verizon Virginia"), filed its Motion To Dismiss and Answer on August 25, 1999. Cox filed its Response on September 15, 1999, also as provided in the Preliminary Order.

The Petition requests that Verizon Virginia be ordered to comply with Rule B7, 20 VAC 5-400-20, by relocating the Network

¹ Letters of Agency authorizing Cox to act on behalf of Complainants are attached to the Petition as Exhibit 1. The Petition alleges that Verizon Virginia's failure to comply with Complainant's requests constitutes a violation of its own tariff terms, its duty under § 251(c)(3) of the Telecommunications Act ("Act") to provide non-discriminatory access to a network element (the NID), and that the Rules of the Federal Communications Commission ("FCC") at 47 C.F.R. § 68.3 require the same result.

Interface Device ("NID") to each living unit in Complainants' Multiple Dwelling Unit ("MDU") properties to the Minimum Point of Entry ("MPOE"); that Complainants be charged no more than reasonable time and materials for the relocation; and that Verizon Virginia convey to Complainants all of the Intrabuilding Network Cabling for a price no greater than its fully depreciated net book value. The Petition requests that Verizon Virginia be ordered to furnish and install on an expedited basis such NIDs at the MPOE that will facilitate cross-connection by Cox and any other CLEC authorized in the future to cross-connect on Complainants' premises. The Commission is further requested to determine the reasonable rates and charges for the requested services and facilities to be provided by Verizon Virginia and to enjoin Verizon Virginia from refusing or failing to furnish and install, or impeding the reengineering and reconfiguration, of Complainants' telecommunications facilities as requested herein.

Verizon Virginia's Motion To Dismiss and Answer deny that the Commission's NID Rules² require it to relocate existing network facilities. Rather, it argues that the Rules apply only to the placement of NIDs for new installations. Verizon Virginia also denies that it is in violation of the FCC Rules

² The Commission adopted Amended Rules Governing the Provision of Network Interface Devices in Case No. PUC830039, Final Order issued December 17, 1985, 20 VAC 5-400-20.

relied upon by Cox and that those rules also only apply to the initial establishment of a rate demarcation point. Also, Verizon Virginia denies that it is in violation of its own tariffs. It argues that portions of Verizon Virginia's tariffs either do not apply to changes to existing NIDs or do not oblige Verizon Virginia to move its facilities. Finally, Verizon Virginia denies that the Act requires it to comply with the requested relief.

Verizon Virginia urges that the Commission dismiss the Petition and await further rulemaking by the FCC on redefining the demarcation point under Part 68 of the FCC's Rules with regard to multiple tenant environments.

It now appears that the FCC has accomplished the anticipated rulemaking, although the effective date for such rule changes to 47 C.F.R. 68.3 has not been announced by the FCC in the Federal Register.

The Commission concludes that Verizon Virginia's Motion To Dismiss should be denied. The Commission has been informed by its Staff that the parties are willing to pursue a negotiated settlement of the issues remaining. We will hold further proceedings in abeyance for thirty (30) days while the parties pursue settlement negotiations. In the event a settlement cannot be reached within one month, then the parties are directed to file a joint statement of remaining issues. The

joint statement of remaining issues should be supported by such additional information as may be needed to refresh the record in this case.

Accordingly, IT IS THEREFORE ORDERED THAT:

(1) The Motion to Dismiss by Verizon Virginia is hereby denied.

(2) The Commission will hold further proceedings in abeyance for thirty (30) days from the date of this Order while the parties pursue a negotiated settlement consistent with the findings above.

(3) In the event that no settlement is reached within thirty (30) days from the date of this Order, the parties are directed to file a joint statement of remaining issues with supporting information, consistent with the findings above.

(4) This matter is continued generally.